

21 C.J.S. Courts § 325

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Courts

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X. Clerks of Courts

A. Nature of Office, Appointment, Qualification, and Tenure

§ 325. Creation and abolition of office

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#) 2

Where the office of court clerk is created by the state constitution, it is a constitutional office which may not be abolished by the legislature except by the adoption of constitutional amendments.

Where the office of court clerk is created by statute, it is a statutory office.¹ Where the office is created by the state constitution, it is a constitutional office² which may not be abolished by the legislature except by the adoption of constitutional amendments.³ However, a mere reference in the state constitution to the position of court clerk does not automatically render that position a constitutional office that can only be changed by the legislature pursuant to the constitution or by constitutional amendment.⁴

Where the state creates an office of court clerk with the same functions as an existing local court clerk, the office of the local clerk ceases to exist.⁵

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Footnotes

¹ U.S.—[U S v. Oliphant](#), 230 F. 1 (C.C.A. 3d Cir. 1916).

Clerk-magistrate

The position of clerk-magistrate is one created by statute.

Mass.—*Com. v. Clerk-Magistrate of West Roxbury Div. of Dist. Court*, 439 Mass. 352, 787 N.E.2d 1032 (2003).

2 Cal.—*St. John v. Superior Court*, 87 Cal. App. 3d 30, 150 Cal. Rptr. 697 (4th Dist. 1978).

N.Y.—*Olmsted v. Meahl*, 219 N.Y. 270, 114 N.E. 393 (1916).

3 Nev.—*State v. La Grave*, 23 Nev. 373, 48 P. 193 (1897).

4 Nev.—*State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 32 P.3d 1263 (2001).

5 Or.—*Buchanan v. Wood*, 79 Or. App. 722, 720 P.2d 1285 (1986).

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